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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,010	07/15/2003	Scott T. Broadley	BROADRE.23CP1C1	9107
20995 7590 11/02/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER BELL, BRUCE F	
			ART UNIT 1795	PAPER NUMBER
			NOTIFICATION DATE 11/02/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary

Application No.

10/621,010

Applicant(s)

BROADLEY ET AL.

Examiner

Bruce F. Bell

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,6-17,21,23-38 and 40-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-26 and 30-38 is/are allowed.
- 6) ☒ Claim(s) 3,6-17,23,27-29 and 40 is/are rejected.
- 7) ☒ Claim(s) 21,41 and 42 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/4/07; 7/13/07.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 3, 6, 28, 29 and 40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 23-26 of U.S. Patent No. 6616821. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent encompass those of the instant invention. Even though the prior art claims do not recite a chamber for the reference electrolyte solution, one having ordinary skill in the art would understand that some type of vessel would be needed in order to be able to pressurize the system and hold the electrolyte internal to the chamber or vessel. Therefore the chamber would be an obvious variation known to those having ordinary skill in the art. With respect to claim

Art Unit: 1795

3 of the instant invention, claim 1 of the patent meets the limitations of the instant claim

3. With respect to claim 6 of the instant invention, the combination of claims 1 and 23 of the patent meet the limitations of instant claim 6. With respect to claims 28 and 29 of the instant invention, claims 25 and 26 of the patent meet the limitations of these claims.

With respect to claim 40 of the instant invention, the combination of claims 1, 23 and 24 meet the limitations of claim 40.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 6-17, 23, 27-29 and 40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11, 13-18 of U.S. Patent No. 7005049. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent encompass those

Art Unit: 1795

of the instant invention. Even though the prior art claims do not recite a chamber for the reference electrolyte solution, one having ordinary skill in the art would understand that some type of vessel would be needed in order to be able to pressurize the system and hold the electrolyte internal to the chamber or vessel. Therefore the chamber would be an obvious variation known to those having ordinary skill in the art. With respect to claim 6 of the instant invention, the combination of claims 1 and 2 of the patent meet the limitations of the instant claim. With respect to claim 7 of the instant invention, claims 1 or 16 of the patent meet the limitations of instant claim 7. With respect to claim 8, the combination of claims 1-3 of the patent meet the limitations of instant claim 8. With respect to claim 9, the combination of claims 1, 2 and 4 of the patent meet the limitations of instant claim 9. With respect to claim 10, the combination of claims 1, 2 and 5 of the patent meet the limitations of instant claim 10. With respect to claims 11 and 12, the combination of claims 1, 2 and 6 of the patent meet the limitations of instant claims 11 and 12. With respect to claim 13, the combination of claims 1 and 7 of the patent meet the limitations of instant claim 13. With respect to claim 14, the combination of claims 1 and 8 of the patent meet the limitations of instant claim 14. With respect to claims 15-17, the combination of claims 1 and 9 of the patent meet the limitations of instant claims 15-17. With respect to claim 23, the combination of claims 1 and 10 of the patent meet the limitations of instant claim 23. With respect to claim 27, the combination of claims 1 and 11 or 13 of the patent meet the limitations of instant claim 27. With respect to claim 28, the combination of claims 1 and 2 of the patent meet the limitations of instant claim 28. With respect to claim 28 and 29, the combination of claims 16-18 of

Art Unit: 1795

the patent meet the limitations of the instant claims 28 and 29. With respect to claim 40, the combination of claims 1, 14 and 15 of the patent meet the limitations of the instant claim 40.

Allowable Subject Matter

5. Claims 21, 24-26, 30-38, 41 and 42 are allowable over the prior art of record.
6. Claims 21, 41 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach and/or suggest the instant claims as set forth in each of the above noted allowable claims.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce F. Bell whose telephone number is 571-272-1296. The examiner can normally be reached on Monday-Friday 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1795

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BFB
October 25, 2007


Bruce F. Bell
Primary Examiner
Art Unit 1795